Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules	)	GC Docket No. 10-43
	)	
	)	
	)	

To: The Commission

REPLY COMMENTS OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce ("Chamber") respectfully submits these Reply Comments in connection with the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Proposed Rulemaking* in this Docket ("*FNPRM*").[1] In its initial comments, the Chamber demonstrated that the adoption of new filing disclosure rules as proposed in the *FNPRM* would violate the Administrative Procedure Act ("APA") and the First Amendment due to the lack of sufficient record evidence demonstrating an actual problem in need of fixing, and that any rule that the Commission might nevertheless adopt must be appropriately tailored to address fundamental associational rights under the First Amendment.[2] Two other commenters – Free Press and Media Access Project ("MAP") – advocated strenuously in favor of expanded disclosure rules and indeed Free Press argued for rules that go far beyond even those proposed in the *FNPRM*. Neither supplied evidence of a widespread problem sufficient to warrant new rules, and their own proposals fail to satisfy the APA or the First Amendment.

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[1] *Amendment of the Commission's* Ex Parte *Rules and Other Procedural Rules*, Further Notice of Proposed Rulemaking, GC Dkt. No. 10-43 (rel. Feb. 2, 2011).

[2] *See generally* Comments of the U.S. Chamber of Commerce, GC Dkt. No. 10-43 (filed June 16, 2011) ("Chamber Comments").

As the Chamber explained in its opening comments, both the APA and the First Amendment preclude the FCC from regulating absent record evidence of a regulatory problem in need of fixing.[3] Free Press, the only party even to *attempt* to supply such evidence, merely repeats unsubstantiated, anecdotal allegations that some entities fail to disclose their "true" identities in Commission filings and identifies a single proceeding in which participants allegedly failed to disclose their "real" interests.[4] Free Press points to only *one* specific organization, and that organization, as Free Press' own comments make clear, disclosed in the very filing cited by Free Press that the party whose interests it supported was a member of the filing organization.[5] These claims plainly fail to supply evidence of a problem sufficient to justify the imposition of new disclosure rules that would affect the thousands of FCC proceedings that are open at any given time and the numerous filers in each of those dockets.

The Chamber also explained that, because important First Amendment rights are at stake, any rules that the Commission adopts must bear a "substantial relation" to the government interests to be served.[6] The Chamber further established that, of the proposals set forth in the *FNPRM*, only the corporate disclosure rules of the federal appellate courts (particularly the D.C. Circuit) might hypothetically satisfy this requirement – even assuming that the FCC could

[3] *Id.* at 4 & n.4, 7 & n.13 (citing cases); *see also Brown v. Entm't Merchants Ass'n*, No. 08-1448, Slip Op. at 12 (U.S. June 27, 2011) (to justify speech regulation, government must "specifically identify an 'actual problem' in need of solving") (citation omitted).

[4] Comments of Free Press, GC Dkt. No. 10-43, at 2-6 (filed June 16, 2011) ("Free Press Comments") (alleging, among other things, that "some organizations that support the AT&T/T-Mobile merger have received substantial contributions from AT&T").

[5] *Id.* at 6 n.14 ("The letter filed in Docket 11-65 states both 'According to the merging parties (including IIA member AT&T)' and 'The IIA includes members such as Alcatel Lucent, AT&T, Ciena, The National Black Chamber of Commerce and The National Grange.'").

[6] Chamber Comments at 8 & n.16 (citing cases); *see id.* at n.15 (citing cases showing that APA requires a proper "fit" between a regulation and an agency's asserted goals); *Brown*, Slip Op. at 12 ("curtailment of free speech must be actually necessary to the solution") (citation omitted).

muster evidence sufficient to support regulating at all.[7] MAP, however, endorses the *FNPRM*'s suggestion that the Commission model new rules on Rule 29(c)(5) of the Federal Rules of Appellate Procedure, which requires certain disclosures to be made regarding the funding of amicus briefs.[8] The Chamber already explained why this proposal should be rejected – among other reasons, the funding disclosure rules seek to address problems that are irrelevant to FCC proceedings[9] – and MAP's comments fail to demonstrate otherwise.

Free Press' suggestion that the Commission should go *beyond* the proposals for expanded disclosure requirements in the *FNPRM* – namely, mandating disclosures of "material conflicts" flowing from "substantial or targeted monetary contributions as well as targeted non-monetary contributions" in "each relevant filing"[10] – is even more obviously untenable. As shown in the Chamber's opening comments and above, the record in this proceeding simply does not support the need for *any* additional burdens upon Commission advocacy. Moreover, given the breadth of the disclosures that Free Press would have the FCC require, Free Press' contention that its proposals "would not create significant burdens" is meritless.[11] Regardless, due to the important First Amendment interests at stake here, the Commission must take care to adopt "less

[7] Chamber Comments at 9-11.

[8] Comments of Media Access Project, GC Dkt. No. 10-43, at 4-5 (filed June 16, 2011); *see FNPRM*, ¶ 82.

[9] Chamber Comments at 12 n.24.

[10] Free Press Comments at 7; *see id.* at 7-17.

[11] *Id.* at 7.

restrictive" alternatives that are available to it,[12] and Free Press' proposals clearly do not satisfy that requirement.[13]

In short, the Commission now has twice sought to build a record sufficient to support enhanced disclosure rules. This most recent attempt, like the initial notice of proposed rulemaking, fails to demonstrate a problem sufficient to justify the broad and intrusive interference with the policymaking process proposed by the *FNPRM*, Free Press, and MAP. The Chamber thus respectfully urges the Commission to decline to adopt any enhanced disclosure rules in this proceeding and, at a bare minimum, not to adopt any rules that go beyond the corporate disclosure rule of the D.C. Circuit.

Respectfully submitted,

U.S. Chamber of Commerce

By: /s/

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[12] *E.g.*, *Reno v. Am. Civil Liberties Union*, 521 U. S. 844, 874, 875, 879 (1997).

[13] *Cf.* Chamber Comments at 9-16 (explaining why judicial corporate disclosure rules, limited to the *ex parte* process, would be more than adequate to satisfy the Commission's goals and would tread least on protected associational rights, and demonstrating why rules modeled on the Lobbying Disclosure Act would be particularly problematic).